

439-01/DPM
FREEHILL HOGAN & MAHAR, LLP
Attorneys for Petitioner A.P. MOLLER-MAERSK A/S
80 Pine Street
New York, NY 10005
(212) 425-1900
(212) 425-1901 fax
Don P. Murnane, Jr. (DM 3639)
Manuel A. Molina (MM 1017)

JUDGE BATTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CV 1750

-----X
A.P. MOLLER-MAERSK A/S,

07 CV _____ ()

Petitioner,

- against -

**AFFIDAVIT OF
DON P. MURNANE, JR.
IN SUPPORT OF PETITION**

AGROWEST S.A., DOSVALLES S.A., AND
COMEXA S.A.,

Respondents.
-----X

DON P. MURNANE JR., having first been duly sworn, deposes and says as follows:

1. I am a partner in the law firm of Freehill Hogan & Mahar LLP, attorneys for Petitioner A.P. MOLLER-MAERSK A/S (hereinafter, "Maersk"), and am admitted to practice before this court. I provide this affidavit in support of the instant Petition by Maersk seeking an order from the court requiring Respondents to proceed immediately to arbitration in accordance with the governing arbitration clause and disqualifying Respondents' arbitral nominee, J. David Stark, from service as an arbitrator in such proceedings.

2. The court is respectfully referred to the accompanying Petition, the contents of which are adopted and incorporated herein by reference.

3. In connection with the litigation conducted before the Second Maritime Court in Panama, I was called by Maersk as a witness to provide evidence on United States maritime law concerning the enforcement of arbitration clauses contained within maritime contracts.

4. Through my participation in the Panama litigation, I obtained from local Panama counsel, Messrs. Morgan & Morgan, and attach hereto Exhibits "95" "98" and "99" which were annexed to Respondents' Complaint filed with the Panmanian court on or about June 28, 2002 apparently for the purposes of establishing alleged attorneys fees "damages" incurred by Respondents in preparing the presentation of their claims.

5. Exhibits "98" and "99" include certain invoices submitted for payment by Respondents' New York attorneys, Clark, Atcheson & Reisert L.L.P. These invoices document and establish that prior to his nomination as Respondents' arbitral nominee, Mr. Stark engaged in a series of detailed discussions with counsel and with Agrowest's President Mr. Haito concerning the merits of the case, the particular factual allegations, and the manner in which the claim should be argued and presented to Maersk. For example, the invoices contained the following statements regarding discussions conducted with Mr. Stark (on information and belief the initials "PDC" refer to attorney Peter D. Clark; "RJR" to attorney Richard J. Reisert; "JM" to attorney John McConnell; "MH" to Manuel Haito – Agrowest's President, and "DS" to David Stark):

6/21/01 **PDC Telephone call from Mr. David Stark of J.D. Stark & Associates, Inc. regarding approximately 40 cargo claims by his principle Agrowest S.A. against Maersk Line and a breach of service contract claim against Maersk No charge**

6/22/01 **PDC Office meeting with Mr. David Stark and partner RJR to discuss case; telephone call conference call with MH of Agrowest S.A. in Panama to discuss case in detail;**

RJR Preparation for and meet with Mr. David Stark and PDC regarding details of case; teleconf with Mr. Manuel Haito (MH) in Panama regarding same;

6/25/01 RJR Telecons Mr. David Stark and calls to Mr. Manuel Haito regarding claim;

6/28/01 RJR Receive documents from MH; telecon DS regarding same;

6/29/01 PDC Conference call with RJR, DS and MH on status and strategy;

7/5/01 PDC Telephone call from DS regarding status;

7/9/01 PDC Conference call with MH, DS and RJR on strategy;

7/12/01 PDC Analyzed B/L and service contract; telephone call to DS;

7/13/01 RJR Conferring with PDC; conference call with MH and DS regarding latest developments on meeting with Maersk strategy, etc.

PDC Conference call with DS and MH regarding scheduling Settlement meeting at Maersk;

7/16/01 RJR Fax from Maersk and telecon MH and DS regarding same;

7/16/01 Fax from Maersk and teleconf with MH and DS; conferring with PDC regarding same;

7/18/01 PDC Conference call with MH, DS, RJR regarding status and strategy for settlement discussion;

RJR Conference call with MH, DS, PDC regarding status and strategy for settlement discussion;

7/25/01 RJR Numerous telecons, voice-mails, etc. with DS, Maersk and PDC regarding status of claims;

7/26/01 RJR Fax from Maersk regarding rescheduling meeting to 8/14; voice-mail DS regarding same; telecom DS regarding same;

7/27/01 RJR Telecon DS confirming 8/14 meeting date; memo

8/2/01 PDC Telephone call from DS to change meeting from 8/14 to 8/15;

8/3/01 PDC Telephone call from DS regarding date change of Meeting to 8/15; telephone call to DS regarding Status;

8/6/01 PDC Draft facsimile to MH and DS on firm meeting date of 8/15; legal research on damage issues;

8/9/01 PDC Telephone call from DS to schedule meeting at our Office for 8/14;

8/14/01 PDC Prepare for and meet with MH, DS, JM and RJR to plan strategy for meeting;

RJR Prepare for and meet with MH, DS, JM and PDC In preparation for 8/15 meeting at Maersk; memo and Notes;

8/15/01 RJR Prepare for, travel to/from and meet with MH, PDC, DS and JM at Maersk; post-meeting discussions;

PDC Review legal research; attend meeting at Maersk with MH, DS, JM, AT, RR and RJR.


(Emphasis supplied).

6. Exhibit "95" is a letter from Agrowest to Messrs. Clark, Atcheson & Reisert L.L.P. dated September 11, 2001 advising Clark, Atcheson & Reisert L.L.P. that their services would no longer be required in the matter and that Agrowest had decided to proceed by way of formal proceedings in either Panama or London. Accordingly, at the present time it is not clear to the undersigned or Petitioner whether Clark, Atcheson & Reisert L.L.P. continues to represent Mr. Haito or Respondents Agrowest, DosValles or Comexa, or any of them. A copy of the instant Petition and supporting documentation will nevertheless be served on Messrs. Clark

Atcheson & Reisert L.L.P. as a courtesy in the event that they are continuing to represent Respondents, or any of them.

7. For the avoidance of any doubt, it appears from the above documentation that Messrs. Clark Atcheson & Reisert L.L.P. were in no way involved with the decision of Agrowest and/or Mr. Haito on October 9, 2002 to appoint Mr. Stark as Respondents' arbitral nominee, nor does it appear that Messrs. Clark Atcheson & Reisert L.L.P. have had any role in the decision by the Respondents to refuse to withdraw their nomination of Mr. Stark. Exhibit "95" indicates that Clark Atcheson & Reisert L.L.P. had been released by Agrowest from further work on the matter more than a year before the Stark appointment by Agrowest. I have known Mr. Clark for many years, and he and his partners are well-regarded New York maritime attorneys, and nothing in this affidavit is intended to insinuate that Mr. Clark or members of his firm had any involvement in the appointment of Mr. Stark by Agrowest.

Dated: New York, New York
February 28, 2007


Don P. Murnane, Jr.

Sworn to before me
this 28 day of February, 2007


Notary Public

CLARE HENRY
Notary Public, State of New York
No. 01HE4831498
Qualified in Kings County
Certificate in New York County
Commission Expires October 31, 2009

NYDOCS1/278945.1

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Agrowest S.A.

*Calle Comandante José Roman 141, Urb. La Aurora, Lima 18, Perú. Telf. (511) 445-6792,
Fax (511) 444-4245, E-mail: west@terra.com.pe*

September 11, 2001

Mr. Peter D. Clark
Clark, Atcheson & Reiser
535 Fifth Avenue
New York, New York 10017

Dear Mr. Clark:

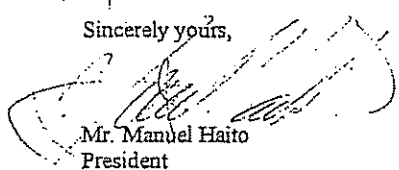
Thank you for the work you have done regarding the cargo claims and the breach of contract claim that we have with Maersk for the last season for cargo from Panama and Peru.

Since our meeting with Andy Tsukamoto in New Jersey on August 15th, 2001 has not resulted in any attempt on the part of Maersk to negotiate any of the legitimate outstanding issues we have decided to litigate these claims either in London or in Panama. We were disappointed that the results that we had anticipated were not even partially achieved and that contrary to what we had expected Maersk has not acted in good faith to resolved any of these issues.

We would like to finalize any outstanding account that we have with you at your earliest convenience.

Thank you again.

Sincerely yours,


Mr. Manuel Haito
President

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CLARK, ATCHESON & REISERT
 535 FIFTH AVENUE
 NEW YORK, NEW YORK 10017

PETER D. CLARK**
 FRANK A. ATCHESON*
 RICHARD J. REISERT

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DEAN W. STEELE*
 GUY W. REBERT

ALSO ADMITTED IN:
 * NEW JERSEY
 * CONNECTICUT

CONNECTICUT OFFICE
 511 RIVERSIDE AVENUE
 WESTPORT, CONNECTICUT 06880
 TELEPHONE (203) 226-7700

E-MAIL ADDRESS

August 22, 2001

Invoice # 11568

Invoice submitted to:

Mr. Manuel F. Haito
 Agrowest, S. A.
 Ed. Banco Dresder Plsco No. 9
 Calle 50
 Panama R. De Panama

In Reference To: Agrowest S. A. v. Maersk Lines
 Our Ref: 146-457-01

For professional services rendered and
 disbursements incurred for the period of
 July 25, through August 15, 2001.

		<u>Hrs/Rate</u>	<u>Amount</u>
7/25/01 RJR	Numerous telecons, voice-mails, etc. with DS, Maersk and PDC regarding status of claims, meeting schedule, etc.; voice-mail to AT at Maersk regarding same; prepare for meeting by reviewing contractual terms and applicable law.	2.30 225.00/hr	517.50
7/26/01 RJR	Fax from Maersk regarding rescheduling meeting to 8/14; voice-mail DS regarding same; telecon DS regarding same; conferring	0.50 225.00/hr	112.50

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	with PDC in Pittsburgh regarding same.		
7/27/01 RJR	Telecon DS confirming 8/14 meeting date; memo.	0.30 225.00/hr	67.50
7/30/01 RJR	Conferring with PDC; faxes to Maersk and client regarding meeting date, etc.	0.80 225.00/hr	180.00
PDC	Discussions with RJR on strategy for settlement conference with Maersk.	0.50 225.00/hr	112.50
8/1/01 RJR	Teleconf with MH and PDC regarding status, developments, meeting, etc.; teleconf John McConnell, Esq. regarding same; conferring with PDC regarding strategy.	0.80 225.00/hr	180.00
PDC	Legal research on damages from delay cases; <u>conference calls with MH, RJR and JMc, Esq. regarding strategy for settlement conference.</u>	2.00 225.00/hr	450.00
8/2/01 PDC	Telephone call from DS to change meeting from 8/14 to 8/15; telephone call to A. Tsukamoto, Esq.'s voice mail regarding same.	0.20 225.00/hr	45.00
8/3/01 PDC	Telephone call from DS regarding date change of meeting to 8/15; telephone call to AT regarding same;	0.50 225.00/hr	112.50

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	telephone call to DS regarding status.		
8/6/01 GWH	Confer with PDC; legal research on delay cases.	1.60 150.00/hr	240.00
RJR	Conferring with PDC regarding status developments, meeting etc.; legal research regarding consequential damages in cargo cases.	1.00 225.00/hr	225.00
PDC	<u>Draft facsimile to MH and DS on firm meeting date of 8/15; legal research on damage issues.</u>	2.00 225.00/hr	450.00
8/7/01 RJR	Miscellaneous preparation and arrangements for 8/14-15/01 meetings.	0.50 225.00/hr	112.50
8/8/01 RJR	<u>Fax MH regarding meeting, scheduling, etc.; conferring with PDC regarding meeting strategy and agenda; legal research.</u>	0.50 225.00/hr	112.50
8/9/01 PDC	Telephone call from DS to schedule meeting at our office for 8/14; legal research regarding consequential damage cases.	1.50 225.00/hr	337.50
8/10/01 PDC	<u>Legal research on service contracts as separate contracts from bills of lading.</u>	2.00 225.00/hr	450.00

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
8/13/01 RJR	Prepare for 8/14-15/01 meetings with Agrowest and Maersk.	1.50 225.00/hr	337.50
8/14/01 PDC	Prepare for and meet with MH, DS, JM, and RJR to plan strategy for meeting.	2.70 225.00/hr	607.50
RJR	Prepare for and meet with MH, DS, JM and PDC in preparation for 8/15 meeting at Maersk; memo and notes.	2.80 225.00/hr	630.00
8/15/01 RJR	Prepare for, travel to/from and meet with MH, PDC, DS and JM at Maersk; post-meeting discussions.	6.00 225.00/hr	1,350.00
PDC	Review legal research; attend meeting at Maersk with MH, DS, JM, AT, RR and RJR.	3.00 225.00/hr	675.00

Subtotal of charges		\$7,305.00
Less Escrow Deposit		(\$5,047.45)
For professional services rendered	33.00	\$2,257.55

Disbursements

Photocopy	6.30
Telephone/fax	13.50

Total costs	\$19.80
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Total amount of this bill	\$2,277.35
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Sent By: CLARK, ATCHESON & REISERT;

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CLARK, ATCHESON & REISERT835 FIFTH AVENUE
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FACSIMILE (212) 297-0318
INTERNET WWW.ARWK.COMPETER D. CLARK**
FRANK A. ATCHESON**
RICHARD J. REISERTDEAN W. STEELE*
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* CONNECTICUTNEW JERSEY OFFICE
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MORRISTOWN, NEW JERSEY 07960
TELEPHONE (732) 530-0800CONNECTICUT OFFICE
611 RIVERSIDE AVENUE
WESTPORT, CONNECTICUT 06880
TELEPHONE (203) 226-7700

E-MAIL ADDRESS

July 23, 2001

Invoice # 11559

Invoice submitted to:

Mr. Manuel F. Haito
Agrowest, S. A.
Ed. Banco Dresder Plao No. 9
Calle 50
Panama R. De PanamaIn Reference To: Agrowest S. A. v. Maersk Lines
Our Ref: 146-457-01For professional services rendered and
disbursements incurred for the period of
June 21, 2001 through July 18, 2001.

	<u>Hrs/Rate</u>	<u>Amount</u>
6/21/01 PDC Telephone call from Mr. David Stark of J.D. Stark & Associates, Inc. regarding approximately 40 cargo claims by his principle Agrowest S.A. against Maersk Line and a breach of service contract claim against Maersk for their failure to supply reefer containers pursuant to the service contract agreement; discussions with partners FAA and RJR	225.00/hr	NO CHARGE

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Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	regarding facts of case and strategy for settling the cargo claims and service contract dispute on an expedited basis.		
6/22/01 PDC	Office meeting with Mr. David Stark and partner RJR to discuss case; telephone call conference call with MH of Agrowest S.A. in Panama to discuss case in detail; telephone call to Andrew A. Tsukamoto, Esq. at Maersk Line, Madison, New Jersey to discuss various aspects of claims and to schedule office conference with Mr. Andrew Tsukamoto and Mr. Ronald Rembaum of Maersk with PDC, RJR, DS and MH to reach expedited settlement of all disputes.	2.00 225.00/hr	450.00
RJR	Preparation for and meet with Mr. David Stark and PDC regarding details of case; teleconf with Mr. Manuel Haito (MH) in Panama regarding same; review file; memo to file.	2.00 225.00/hr	450.00
6/25/01 RJR	Telecons Mr. David Stark and calls to Mr. Manuel Haito regarding claim; conferring with PDC regarding his telecon	0.50 225.00/hr	112.50

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	with Mr. A. Tsukamoto at Maersk; memo to file.		
6/26/01 RJR	Faxes and telecons with Mr. Manuel Haito regarding proposed settlement of TENNESSEE (Voy. 107); telecons MH regarding same.	1.20 225.00/hr	270.00
6/27/01 RJR	Conferring with PDC; telecon with MH regarding Maersk offer on TENNESSEE (V. 106) and regarding overall strategy; memo.	1.00 225.00/hr	225.00
PDC	Review and analyze claim documents.	0.50 225.00/hr	112.50
6/28/01 RJR	Receive documents from MH; telecon DS regarding same.	0.50 225.00/hr	112.50
6/29/01 RJR	<u>Review documents from MH; long telecon with PDC and MH regarding Maersk offer on TENNESSEE (Voy. 106) and regarding overall approach and strategy.</u>	1.00 225.00/hr	225.00
PDC	Review facsimile from Mr. Ron Rembaum of Maersk Lines to Mr. Haito dated 6/28/01 rejecting one claim and offer \$100 on another; conference call with RJR, DS, and HM on status and strategy.	0.90 225.00/hr	202.50

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Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
7/5/01 PDC	Telephone call from DS regarding status.	0.20 225.00/hr	45.00
7/6/01 PDC	Draft status facsimile to MH dated 7/6/01.	0.50 225.00/hr	112.50
7/9/01 RJR	Conferring with PDC; teleconf with MH regarding negotiations with Maersk; facsimile from MH.	1.30 225.00/hr	292.50
PDC	Telephone call from MH regarding settlement negotiation on B/L claims with RB at Maersk Lines; conference call with MH, DS and RJR on strategy; review and analyze Maersk B/L; review facsimile from MH dated 7/9/01 with Maersk facsimile of 7/9/01 with \$7,382.07 offer and 3 other pages.	1.30 225.00/hr	292.50
7/10/01 PDC	Telephone call from MH regarding Maersk \$7,194.91 offer on a \$10,534.30 claim; advising MH to reject offer and to reopen discussions at New Jersey meeting.	0.40 225.00/hr	90.00
7/11/01 PDC	Review facsimile from MH with enlarged section of B/L; memo from MH regarding two settlement offers; telephone call from MH and instructed	0.60 225.00/hr	135.00

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	him to continue settlement negotiations with RB at Maersk; telephone call from MH who confirmed RB would reconsider the above claims.		
7/12/01 PDC	Analyzed B/L and service contract; telephone call to DS; telephone call from MH and gave him status update; telephone call to AT, Esq. at Maersk to schedule settlement meeting; telephone call to MH regarding discussion with AT, Esq.	1.00 225.00/hr	225.00
RJR	Conferring with PDC regarding his telecon with AT, Esq., strategy for settlement etc.; review B/L; go on-line for Maersk tariff and other terms.	0.70 225.00/hr	157.50
7/13/01 RJR	Conferring with PDC; conference call with MH and DS regarding latest developments on meeting with Maersk, strategy, etc.	0.50 225.00/hr	112.50
PDC	Telephone call to former FMC house counsel Nathan J. Bayer, Esq. regarding regulatory aspects of service contract and	2.00 225.00/hr	450.00

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	<u>details of Maersk's tariff; conference call with DS and MH regarding scheduling settlement meeting at Maersk; draft two facsimilies to AT, Esq. regarding scheduling meeting for 8/1/01 and presenting \$1.47 million breach of contract claim.</u>		
7/16/01 PDC	Review facsimile from AT, Esq. regarding scheduling meeting for week of 7/30/01 and list of claims; office conference with RJR; telephone call to AT, Esq. regarding same.	0.70 225.00/hr	157.50
RJR	Fax from Maersk and telecon MH and DS regarding same; memo; conferring with PDC regarding same.	0.70 225.00/hr	157.50
RJR	Fax from Maersk and teleconf with MH and DS; conferring with PDC regarding same.	0.75 225.00/hr	168.75
7/18/01 PDC	<u>Conference call with MH, DS, RJR regarding status and strategy for settlement discussion and attorney John H. McConnell suing on cargo claims that do not settle</u>	0.60 225.00/hr	135.00

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CLARK, ATCHESON & REISERT

Mr. Manuel F. Haito

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		<u>Hrs/Rate</u>	<u>Amount</u>
	<u>after meeting; conferring with RJR on strategy.</u>		
7/18/01 RJR	Conference call with MH, DS, PDC regarding status and strategy for settlement discussion and attorney John H. McConnell suing on cargo claims that do not settle after meeting; conferring with PDC on strategy.	0.60 225.00/hr	135.00
7/23/01 RJR	Telecon MH regarding 8/1 meeting, status of claim payments, etc.; conferring with PDC regarding same.	0.50 225.00/hr	112.50
	For professional services rendered	21.95	\$4,938.75
	Disbursements		
	Photocopy		6.50
	Telephone/Fax		7.30
	Total costs		\$13.80
	Total amount of this bill		\$4,952.55
	Balance due		\$4,952.55

*Paid from services
account PDC*